

**INTERPRETATION OF THE DIRECTOR
PURSUANT TO SEATTLE MUNICIPAL CODE TITLE 23**

Regarding the Use of the

Property at

8911 and 8915 – 12th Avenue NE

DPD Interpretation No. 05-002

(Project No. 2504904)

Background

This interpretation has been requested by attorney Jeffrey Eustis, on behalf of Friends of Maple Leaf, a group of neighbors of the subject property. The central question is whether a parcel, described as the South 24 feet of Lot 3, Acre 5, Block 30, Maple Leaf Addition to Green Lake Circle, may be developed as a separate legal building site, according to the standards of the Land Use Code. This parcel is under common ownership with property to the south (Lot 4 and the north half of Lot 5) and is improved with a detached garage, accessory to the house on Lot 4 (8911 - 12th Avenue NE). This Department issued an opinion letter on November 9, 2004, concluding that the South 24 feet of Lot 3 can qualify for an exception to the minimum lot area requirement, and may be developed as a separate lot, if the parking that had been provided on that property, accessory to the house on Lot 4, is legally relocated on Lot 4. (The same letter concluded that the north half of Lot 5 qualified as a separate legal building site. Separate development of that site is now underway. The status of the north half of Lot 5 as a separate legal building site is beyond the scope of this interpretation.)

The request for interpretation questions, in particular, whether the parking may legally be relocated on Lot 4. The existing house once had a basement garage, accessed by a steep driveway between retaining walls, but that garage was eliminated long ago, and the driveway was filled in. The interpretation request asserts that a new basement garage could not meet current driveway standards, and thus would not be an acceptable replacement for the parking currently provided in the detached garage. The request for interpretation also includes an argument that structural modifications to create a new garage within the existing house structure would violate the code provision stating that a lot can't qualify for the lot area exception as a result of removal of a portion of a principal structure, as portions of walls would need to be removed to accommodate a garage.

Findings of Fact

1. King County Assessor's Parcel No. 510040-2400 consists of the south 24 feet of Lot 3, all of Lot 4, and the north half of Lot 5, all in Block 30, Maple Leaf Addition to Green Lake Circle. This property has been held under common ownership, in this configuration, since 1946. The property is in an SF 5000 zone: Single Family Residential, subject to minimum lot area requirement of 5000 square feet. The property was annexed into the City in 1945. A house, addressed 8911 - 12th Avenue NE, was built in 1928. The house is situated entirely on Lot 4, and was built at a time when Lot 4 was under separate ownership from neighboring Lots 3 and 5. An historical photo in the tax records show that that house once had a basement garage, accessed via a steep driveway between retaining walls.
2. At some point a detached garage for the house was built on the south 24 feet of Lot 3, and the basement garage was eliminated, along with the cut for driveway access. We have found no permit records for the detached garage. Based on its dimensions and on a photograph provided with the request for interpretation, it appears to be a two-car garage.
3. Last year, developer Mike Ravenscroft requested an opinion letter stating whether the north half of Lot 5 and the south 24 feet of Lot 3 could each qualify as a separate legal building site, according to the lot area exceptions at Seattle Municipal Code Section 23.44.010 B. The north half of Lot 5 has an area of approximately 2706 square feet, and the south 24 feet of Lot 3 has an area of approximately 2688 square feet. On November 9, 2004, William Mills of DPD issued an opinion letter stating that the north half of Lot 5 could be developed as a separate site, and that the south 24 feet of Lot 3 also would qualify for separate development if a parking space for the existing house is provided on Lot 4, in place of the garage currently located on Lot 3. (A copy of that letter is attached to this interpretation.)
4. The determination in the opinion letter with respect to the south 24 feet of Lot 3 was based on application of a minimum lot area exception codified at Seattle Municipal Code Section 23.44.010 B, which provides in part:

B. Exceptions to Minimum Lot Area. The following exceptions to minimum lot area are subject to the limits of subsection B5. A lot which does not satisfy the minimum lot area requirements of its zone may be developed or redeveloped as a separate building site according to the following:

* * * *

4. The lot was established as a separate building site in the public records of the county or City prior to July 24, 1957 by deed, contract of sale, mortgage, property tax segregation, platting or building permit, and falls into one (1) of the following categories; provided that, lots on totally submerged lands shall not qualify for this exception:

* * * *

c. The lot is or has been held in common ownership with a contiguous lot on or after the effective date of the ordinance from which this subsection derives and is not developed with all or part of a principal structure; provided, that no portion of the lot is required to meet the least restrictive of lot area, lot coverage, setback or yard requirements which were in effect for a principal structure on the contiguous lot at the time of the construction of the principal structure, at the time of its subsequent additions, or which are in effect at the time of the development of the lot (Exhibit 23.44.010 B); and provided further, that if any portion of the lot to be developed has been used to meet the parking requirement in effect for a principal structure on a contiguous lot, such parking requirement can and shall be legally met on the contiguous lot.

For purposes of this subsection B4, removal of all or any part of a principal structure or destruction by fire or act of nature on or after the effective date of the ordinance from which this subsection derives shall not qualify the lot for the minimum lot area exception (Exhibit 23.44.010 C)....

5. Section 23.44.010 B 5 relates to property in environmentally critical areas, and has no bearing on the property that is the subject of this interpretation.
6. According to abstracts of title formerly maintained by the city, prior to 1946, the south half of Lot 3 was under common ownership with the remainder of Lot 3, together with Lots 1 and 2. This property was the subject of a warranty deed dated March 23, 1946, and recording under King County Recording No. 3553779. Historic property tax records from the Puget Sound Regional Archives indicate that the south 24 feet of Lot 3 was held as a separate tax parcel until September of 1954, when it was “merged” with Lot 4 and the north half of Lot 5 to form what is currently King County Assessor’s Parcel No. 510040-2400.
7. The existing house is entirely on Lot 4, and was built prior to annexation, and at a time when Lot 3 was under separate ownership. There are no records of any subsequent additions to the house that may have used the south 24 feet of Lot 3 to meet development standards. Based on the GIS maps, the house appears to be 8 or 9 feet south of the north edge of Lot 4. Lot 4, as platted, has an area of approximately 5,413 square feet, and based on the GIS maps, the structure on that lot appears to have a footprint of about 1,280 square feet, for a lot coverage of about 24 percent. Current code standards for Single Family zones would require a five-foot side yard (Section 23.44.014 C), and limit lot coverage to 35 percent (Section 23.44.010 C).
8. A garage is located near the north edge of the south 24 feet of Lot 3, outside of the required front yard.
9. Section 23.40.004 B states: “Legally established parking spaces or loading areas existing on or after July 24, 1957, may not be eliminated unless at least an equal number of spaces serving the use for which they are required and meeting the requirements of this Code are provided.”

10. According to Section 23.54.015 Chart A, the parking requirement for a single-family dwelling unit is one space.
11. Subject to limited exceptions not applicable in this case, accessory parking for a home in a Single Family zone must be provided on the same lot. (SMC Section 23.44.016 B .) Subject to limited exceptions not applicable in this case, parking may not be provided within the required front yard. (Section 23.44.016 C2.) In Single Family zones, the required front yard is generally the 20 feet closest to the street. (Section 23.44.014.)
12. Based on the City's GIS (computer) maps, the house at 8911 - 12th Avenue NE appears to be approximately 20 feet from the right-of-way.
13. The code contains provisions addressing shared driveways and access easements crossing one private property to serve another. See, e.g., Sections 23.54.030 F1f and 23.53.005.
14. Standards for driveways are codified at Seattle Municipal Code Section 23.54.030 D. Among other standards, the code provides that the slope of a driveway may not exceed 10 percent in the first 20 feet from the property line. The Code provides that the Department may waive or modify this requirement, based upon a safety analysis addressing visibility, traffic volume and other relevant issues.
15. Standards are also provided for maximum grade curvature at Section 23.54.030 D3 and accompanying Exhibit 23.53.030C, a copy of which is appended to this interpretation. The Code does not give the Department the authority to waive or modify this standard.
16. The language in Section 23.44.010 B 4, stating that a lot cannot qualify for the historic lot exception as a result of removal of all or any part of a principal structure was added under Ordinance 113216, in 1986. The Director's Report associated with that amendment is attached to this interpretation. The purpose stated for the amendment was "to stop demolition of existing housing for purposes of development of multiple contiguous undersized lots." Development of existing vacant undersized lots was pointed to as a distinct issue, to be considered separately. The code language originally proposed by the Department, as reflected in the Director's Report, would not have allowed relocation of parking in order to free up an undersized lot for separate development, but the ordinance, as adopted, included the express provisions for relocation of parking reflected in the current code.

Conclusions

1. The south 24 feet of Lot 3 was separately deeded to the owner of the property to the south in 1946, and was held as a separate tax parcel for over eight years. Although it was subsequently merged with the tax parcel to the south, it was treated as a separate lot in the County records for a substantial period of time prior to 1957, thus clearing the first hurdle of the minimum lot area exception in Section 23.44.010 B4.
2. The existing house was built prior to annexation of the area into the city, at a time when Lot 3 was under separate ownership from Lot 4. We would conclude that no part of Lot 3 was used to meet development standards that were in effect for the house, at the time it was built. Based on the GIS maps, it also appears that the existing house would conform to current side yard and lot coverage standards even without the south 24 feet of Lot 3 as a part of the site.
3. Although historic photos show that the house had a basement garage, that garage has been eliminated, and parking for the house has been provided in a detached structure on the south 24 feet of Lot 3, instead. We conclude that that parking has been legally provided, and that one space is required under the current code. The garage may not be eliminated unless replaced by at least one space elsewhere on the property, meeting current standards.
4. Although a basement garage was formerly provided within the house, that garage was eliminated. The owner may not now eliminate the detached garage and reestablish the basement garage, if that basement garage does not meet current standards, such as the standard governing driveway slope. The request for interpretation asserts that a driveway to a restored basement garage could not meet the current standards regarding driveway slope or grade curvature. Any proposal to provide replacement parking, either within the house or elsewhere on Lot 4, would need to be evaluated based on submitted plans, but it appears likely that the assertion that a driveway to a restored basement garage could not meet current standards is correct. As noted above, the standard for driveway slope may be waived or modified based on a safety analysis, but there is no provision allowing waiver of the grade curvature standards.
5. The request for interpretation also asserts that restoring the basement garage would involve removal of a portion of the principal structure – portions of the foundation and walls – contrary to the provision against qualifying for the lot area exception of Section 23.44.010 B4 as a result of removal of an part of a principal structure. We do not agree. The central intent of the provision, based on the legislative history, was to stem the trend of demolishing large houses straddling platted lot lines in order to construct multiple “skinny” houses on individual narrow platted lots. Consistent with that, we read “removal” of a portion of a structure as meaning modification of the envelope of the building, so that there is

no structure in a place where structure previously existed. We would contrast that with remodeling that otherwise meets code standards and that does not reduce the envelope of the building.

6. In this particular case, although it appears that a basement garage could not meet driveway standards due to the difference in elevation between the street and the basement level of the house, the owners could in theory meet the parking requirement by sacrificing space on the main floor to create a conforming garage.
7. Another, perhaps better, alternative would be to provide a garage or parking pad in a conforming location to the rear of the house, on Lot 4. It could be accessed via a driveway immediately to the north of the house. If necessary, the driveway could extend onto a portion of the South 24 feet of Lot 3, if proper easements are provided. The driveway also could be shared with a house on the South 24 feet of Lot 3.
8. Because it appears there are feasible, code-complying locations on Lot 4 where parking for the existing house can be provided, we must disagree with the assertion, by Friends of Maple Leaf, that the parking cannot be relocated to Lot 4, and thus that the South 24 feet of Lot 3 cannot qualify as a separate legal building site.
9. We do agree, however, that a parking space is established and required, and must be replaced on Lot 4 in order for the parcel to the north to be separately developed, and we further agree that the replacement parking must meet current locational and access standards. The fact that the house historically had a basement garage does not entitle the owner to meet the parking requirement by restoring that garage, if driveway standards could not be met, as appears to be the case.

Decision

The Department stands by its conclusion in the November 9, 2004 opinion letter: The South 24 feet of Lot 3 may be developed as a separate legal building site, if a parking space for the existing house is legally provided on Lot 4 to replace the one previously provided on the South 24 feet of Lot 3. Modification of the structure to convert existing interior space to a garage does not constitute “removal” of a portion of the house, within the meaning of Section 23.44.010 B, so long as the envelope of the structure is not reduced. The replacement parking must either meet current development standards or else qualify for a waiver or modification of those standards, as provided in the code. There are a number of ways that a parking space can legally be provided on Lot 4, so we cannot categorically state that the South 24 feet of Lot 3 cannot qualify for separate

development. Along with any application for separate development of that north parcel, a proposal for replacement parking on Lot 4 must be submitted, and will be carefully evaluated prior to approval of a permit for a house to the north.

Entered this 1 day of August, 2005.

(signature on file)

Andrew S. McKim

Land Use Planner - Supervisor